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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2029 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? Yes.

JJJ

J

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

G S R T C

Versus

BALDEVBHAI N SAVALIYA

Appearance:

Mr. Divesh Sejpal for
M/S THAKKAR ASSOC. for Petitioner
MR HK RATHOD for Respondent No. 1
Mr. Bambhania Addl.G.P. for Government.

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 01/07/98

ORAL JUDGEMENT

Rule. Mr. H.K.Rathod waives service of notice

of Rule on behalf of the respondent no.1.

2. Gujarat State Road Transport Corporation (GSRTC) has filed the present writ petition to challenge the order passed by the Labour Court, Surat in Ref. (LCS) No.17 of 1995 dated 25.5.96.

3. Shri Baldevbhai Nathabhai Savalia was working as a driver with the petitioner. On 2.3.92 when he was on his duty as a driver of a bus plying between Randher to Bhagyal in Surat. When he was on his duty as a driver of the said bus, he was drunk and being under the influence of drink, he had driven the said bus in a rash and negligent manner which had resulted into the injuries to the passengers who were travelling in the said bus. Therefore, he was taken to the police. The police had arrested him. The police had also produced him before the medical officer and sample of his blood was taken. On getting the medical certificate regarding clinical examination of the respondent as well as the report of the Public Analyst regarding analysis of his blood, he has been charge sheeted by the police and a criminal case was registered before the learned Judicial Magistrate (FC) Surat, but admittedly till this date the trial of the said case has not come to an end. But in the meantime on account of the report of the conductor of the said bus, the department decided to initiate a departmental inquiry against the driver of the bus- the respondent no.1 herein. Accordingly a show cause notice was issued to him to show cause as to why action should not be taken against him. He gave his reply to the show cause notice. In the said reply he had admitted his guilt. Thereafter, a departmental inquiry was initiated against him and it was found that the charge of being under the influence of drink while on duty was held to be proved by the competent authority. Therefore, by an order dated 23.6.1992, he was dismissed from service. He therefore, raised an industrial dispute on account of which the State Government made a Reference to the Labour Court, Surat being Ref.(LCS) No. 17/95. In the said reference, the workmen had not disputed the legality and validity of the departmental inquiry. He had also not disputed the correctness of the finding regarding the misconduct but he had only raised a contention regarding the quantum of punishment awarded to him. The Labour Court had upheld his contention by holding that the punishment awarded to him was harsh and deserves to be interfered with. Therefore, the Labour Court has set aside the order of dismissal from service and directed to reinstate the respondent no.1 without back wages and

continuity of service.

4. Being aggrieved by the said decision the GSRTC has come before this court. Mr. Sejpal, learned advocate for the petitioner vehemently urged before me that there was no justification for the Labour Court to interfere with the punishment awarded to the respondent no.1. He contended that when there is no dispute about the proof of the misconduct against the respondent no.1, the Labour Court ought to have taken into consideration the nature of misconduct as well as the duty of the respondent no.1 and ought not to have interfered with the punishment awarded to him. He further contended that he was a driver and he was driving the bus under the influence of drink. Therefore, the misconduct committed by him was of a grave and serious nature and therefore, the penalty of dismissal from service inflicted on the delinquent was proper and correct penalty. He cited before the case of State of Punjab & ors. vs. Ram Singh Ex.Constable reported in 1992(4) JT (SC) 253 in support of his contention. As against the said submission of him, Mr. Rathod learned advocate for the respondent no.1 submitted before that the Labour court has rightly interfered with the punishment awarded by the competent authority and no interference is called for by the discretion used by the Labour Court. Mr. Rathod cited before me the case of Jashwant Singh vs. Pepsu Roadways Transport Corporation AIR 1984 (SC) 355 in support of his submission.

5. At the cost of repetition it must be stated that there is no dispute of the fact that the respondent no.1 delinquent has committed the misconduct alleged against him. Now the only question to be considered is regarding the quantum of penalty to be awarded to the respondent no.1 and whether there was any justification for the Labour Court to interfere with the penalty awarded by the competent authority of the petitioner. It is true that the respondent no.1 is a driver and he was found driving the bus under the influence of drink. Therefore, he was playing with the lives of occupants of the bus at that time. Therefore, the misconduct committed by him is obviously a serious misconduct and could not be allowed to go with some minor penalty and punishment. The case cited by Mr. Rathod in the case of Jashwant Singh's case (Supra) is also a case of a driver of Pepsu Roadways Transport Corporation and in that case also the charge levelled against him was of being under the influence of drink while on duty as a driver. In that case also the Labour Court had interfered with the punishment of dismissal awarded by the Competent Authority and had

directed the reinstatement of the driver without any back wages. The Supreme Court has found that there was no justification for interfering with the finding of the Labour Court on the ground that punishment of dismissal was a harsh one though the punishment of mere reinstatement without back wages was found not be adequate. This position will be quite clear from the Head Note of the said judgment which is running as under"

"That the Labour Court was right and justified in directing reinstatement of the driver in service. Further the driver is not entitled to back wages for the reasons that appealed to the Labour Court. This is not adequate penalty for the misconduct proved. To keep the driver within the bounds of well-disciplined conduct a further punishment is also called for and should be imposed so that the humanistic approach may not induce him to repeat his intemperate performance. Supreme Court directed that the driver should not be given three increments in the time scale in which he would be reinstated, for next three years."

In the case of State of Punjab & ors (Supra) the delinquent was an armed constable and he was on duty and had a revolver with him and when he was on duty he had consumed liquor and he had gone beyond control and therefore, in view of the said circumstances, the Supreme Court had found that the order of dismissal passed by the competent authority need not be interfered with by exercising powers under Article 32 of the Constitution of India. There is no reference to the decision in the case of Jashwant Singh vs. Pepsu Roadways Transport Corporation(Supra) in the case of State of Punjab & ors (Supra). Therefore, it could not be said that the case of Jashwant Singh (Supra) stand over ruled by the subsequent decision. In view of the peculiar facts of the subsequent case, the Apex Court has held that it was not proper to exercise the discretionary powers under Article 32 of the Constitution of India. But in the earlier case, the discretion was already exercised by the Labour Court in interfering with the penalty awarded by the Competent Authority and the Apex Court has found that the interference by the Labour Court was proper and just. Therefore, in the circumstances, I hold that the case of Jashwant Singh (Supra) is applicable on all fours to the facts of the present case. But as has been held in the case of Jashwant Singh(Supra), the punishment of denying back wages to the workman would not be adequate and proper. The respondent was a driver and he was found

under the influence of drink while on duty as a driver and had also driven the bus under the influence of drink. Therefore, in the circumstances I hold that it would not be just and proper to give him further opportunity to repeat the same misconduct/offence by continuing him in the same job. I would therefore, interfere with the punishment awarded by the Labour Court and instead of reinstating the respondent no.1 without back wages in his original post I, direct the respondent no.1 be reinstated as a helper without any back wages by the petitioner GSRTC within four weeks from today and he should be under the close observation by the authorities for three years and only on finding for three years that he is not indulging in drinking, he may be taken up on his original post of driver by giving him continuity of service as a helper from the original date of appointment as a driver. Rule is made absolute to the aforesaid extent. No order as to costs.

(S.D.Pandit.J)